

Par 14

Spanish Fork File

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALEM LAKE COUNTY, STATE OF UTAH

SPANISH FORK WEST FIELD IRRIGATION COMPANY,
a corporation; EAST BRANCH CANAL COMPANY,
a corporation; SPANISH FORK SOUTH IRRIGATION
COMPANY, a corporation; LAKE SHORE IRRIGATION
COMPANY, a corporation; WILLIAM J. MUNIZ,
JAMES NIELSEN, DAVID E. WILLIAMS, ALLEN S.
LARSEN, GLENNIE HARRISON, BERTILL HANSEN, RAY
P. WILLIAMS, LAWRENCE C. JENSEN, LOREN B.
CRMER, DEAN HANSEN, GRANT LARSEN, THOMAS YODL,
MARK DRIPP, JAMESON MEADE and ALFRED WADDEGARD;
and LEO BARNS, ANGUS FRANCIS and ROY CRMER, as
members of the Board of Directors of the defendant
Strawberry Water Users Association, a
corporation.

DOCKET

No. 18,326

Plaintiffs,

v.

UNITED STATES, a nation; DOUGLAS MCNAUL, as
Secretary of the Interior of the United States;
WILMER A. DEXTER, as Commissioner of the
Bureau of Reclamation of the United States;
STRAWBERRY WATER USERS ASSOCIATION, a corpora-
tion; WILLIAM CHRISTEN, GEORGE Q. SPENCER, A.C.
DAVIS, GENE P. DAVIS, LABAN HARDING, DELL S.
HEATT, B.R. NILSON, GEORGE W. LEPOREK, JR.,
H.H. PARK, SYLVESTER ALLEN, ALBERT FINLEY,
CLINTON CARSON and RUBEN D. GARDNER, as members
of the Board of Directors of the defendant,
Strawberry Water Users Association, a corporation;
STRAWBERRY HIGH LINE CANAL COMPANY, a corporation,
and the members of its Board of Directors, ORAL
SEWARD, GLEN DAVIS, ANDREW LARSEN, GEORGE Q.
SPENCER, J. ANDUS CHRISTENSEN, ERNEST HANES,
LABAN HARDING, ARTHUR F. NECKMAN and DELL S.
HEATT; SPRINGVILLE IRRIGATION DISTRICT, a body
corporate and politic, and its Board of Directors,
ARTHUR FINLEY, GLEN SUMPTION and RUEB CRANDALL;
MAPLETON IRRIGATION DISTRICT, a body corporate
and politic and its Board of Directors, SYLVESTER
ALLEN, RIAL WELTING and LEON TEE; SPANISH FORK
CITY, a municipal corporation; FAIRBORN CITY, a
municipal corporation; SALEM CANAL AND IRRIGATION
COMPANY, a corporation, and ERNEST HANES and ERIC
SIMONS, two of its stockholders; SPANISH FORK
SOUTHEAST IRRIGATION COMPANY, a corporation, and
GARLAND SUMPTION and BOB BRAFORD, two of its
stockholders; CLINTON IRRIGATION COMPANY, a
corporation, and KURT CHAMBERS and ARREST W.
MICHAIL, two of its stockholders; JOSEPH H.
TRACY, State Engineer of the State of Utah,

Defendants.

This cause came on regularly for hearing before the Court sitting without a jury on the 7th day of January, 1937. The parties appeared by their attorneys, and evidence was offered and received in support of the issues raised by the pleadings. At the conclusion of the evidence the Court heard the arguments of Counsel and granted leave to file written Briefs. Counsel have filed written Briefs, and further hearings from time to time have been had.

The Court having heard the evidence, the oral arguments of Counsel, and having read the Briefs filed by them, and having made in writing Findings of Fact and Conclusions of Law, and being now fully advised in the premises,

Now, therefore, it is ordered, adjudged and decreed:

1. That Spanish Fork River is a natural stream of water which rises in the Wasatch Mountains, flows in a northeasterly direction, and when its waters are not diverted the same empty into Utah Lake.
2. That the United States and its successors in title and interest, if any, is the owner of a right to the use of a flow of 155 cubic feet per second of the waters of Spanish Fork River throughout the year. Such right being for the generation of power, extends throughout the year and has a priority date of 1904.
3. That the United States and its successors in interest are the owners of the right to the use of a flow of 300 cubic feet per second of the waters of Spanish Fork River. That the right to the use of said water is for irrigation purposes and extends from March 1st to November 1st of each year, and has a priority date of about February 4, 1909.
4. That the United States and its successors in interest are the owners of the right to the use of a flow of 97 cubic feet per second of the waters of Spanish Fork River. That the right to the use of said water is for irrigation purposes and extends from March 1st to November 1st of each year, and has a priority date of the year 1914.
5. That the East Bench Canal Company, formerly known as the Spanish Fork East Bench Irrigation and Manufacturing Company, a corporation, is the owner of the right to the use of a flow of 25 cubic feet per second of the waters of Spanish Fork River. That the right to the use of said water is

for irrigation of the lands of its stockholders and extends from March 1st to November 1st of each year, and has a priority date long before the right acquired by the United States in and to the waters of Spanish Fork River.

3. That the Salem Canal and Irrigation Company, a corporation, is the owner of the right to the use of a flow of 33 cubic feet per second of the waters of Spanish Fork River. That the right to the use of said water is for irrigation of the lands of its stockholders and extends from March 1st to November 1st of each year, and has a priority date long before the rights acquired by the United States in and to the waters of Spanish Fork River.

4. That the Lakeview Irrigation Company, a corporation, is the owner of the right to the use of a flow of 40 cubic feet per second of the waters of Spanish Fork River. That the right to the use of said water is for irrigation of the lands of its stockholders and extends from March 1st to November 1st of each year, and has a priority date long before the rights acquired by the United States in and to the waters of Spanish Fork River.

5. That the Spanish Fork South Irrigation Company, a corporation, is the owner of the right to the use of a flow of 75 cubic feet per second of the waters of Spanish Fork River. That the right to the use of said water is for the irrigation of the lands of its stockholders and extends from March 1st to November 1st of each year, and has a priority date long before the rights acquired by the United States in and to the waters of Spanish Fork River.

6. That the Spanish Fork West Field Irrigation Company, a corporation, Spanish Fork Southeast Field Irrigation Company, a corporation, and Spanish Fork City, a municipal corporation, have the right to the use of a flow of 103 cubic feet per second of the waters of Spanish Fork River. That the right to the use of said water is for the irrigation of the lands of the stockholders of the Spanish Fork West Field Irrigation Company, and of the Spanish Fork Southeast Irrigation Company, and of the lands within Spanish Fork City, and extends from March 1st to November 1st of each year, and each of said rights has a priority date long before the right acquired by the United States in and to the waters of Spanish Fork River.

10. That the United States and its successors in interest are the owners of the right to the use of the waters which are and which may be stored in the Strawberry Reservoir, which is located in Wasatch County, Utah.

11. That the rights of the East Bench Canal Company, a corporation, Salem Canal and Irrigation Company, a corporation, Lake Shore Irrigation Company, a corporation, Spanish Fork South Irrigation Company, a corporation, Spanish Fork Southeast Irrigation Company, Spanish Fork West Field Irrigation Company, a corporation, and Spanish Fork City, a municipal corporation, to the use of the waters of Spanish Fork River in the quantity and during the time and times above specified are prior in time and superior to the rights of the United States, and the United States, its agents and successors in title and interest, are perpetually enjoined from asserting any right, title or interest in or to the above mentioned quantities of water during the times above mentioned as long as such water is beneficially used by the said East Bench Canal Company, the Salem Canal Company, the Lake Shore Irrigation Company, the Spanish Fork South Irrigation Company, the Spanish Fork Southeast Irrigation Company, the Spanish Fork West Field Irrigation Company, or their stockholders, and Spanish Fork City, or its inhabitants.

12. That the rights of the United States and its successors in interest in and to the waters stored in the Strawberry Reservoir above mentioned are superior to any rights of the other parties to this action, and the rights of the United States to the flow of the water of Spanish Fork River to the extent of 300 cubic feet per second during the period extending from March 1st to November 1st of each year is subsequent in time and inferior in right to the rights of the other parties as hereinbefore specifically set out. The rights to the use of the water stored and to be stored in the Strawberry Reservoir, and to the use of the flow of the waters of Spanish Fork River above specified as granted in the United States and the successors in title and in interest, and the other parties, their agents and successors in title and interest, are perpetually enjoined from asserting any right, title or interest in or to the above mentioned quantities of water during the times above mentioned as long as such water is beneficially used by said United States, or its successors in title and interest.

13. That in light of the fact that the quantity of water in Spanish Fork River to which the United States and its successors in interest have the right to the use thereof varies during different years and during different seasons of the same year, the Court has deemed it proper and necessary to make and does make the following provisions of the nature in which the waters of the project shall be regulated and distributed during the next ten years after the entry of this decree as follows:

That all water users shall be charged in full for all stored water and for all project river water used during periods when reservoir water is being released.

That in any calendar year when the project supply will probably not be sufficient to furnish to the holders of approved applications 100 per cent of the amount of water applied for and approved under their applications, then all users of project river water shall be charged in full for such water used after May 1st, and 20 per cent for water used prior to May 1st.

That in any calendar year when the project supply will probably be sufficient to furnish 100 per cent or more of project water covered by their approved applications, then users of project river water shall be charged for it as follows:

- (a) For water received prior to May 1st when water is not being released from the reservoir, 20 per cent.
- (b) For water received between May 1st and May 31st when water is not being released from the reservoir, 50 per cent.
- (c) For water received after May 31st, 100 per cent.

The term "project river water" as herein used refers to water from Spanish Fork River available under the appropriations made by the United States in the flow of Spanish Fork River.

14. That for the purpose of administering the provisions of paragraph 13 of this Decree, and establishing the percentage charges to be made for the use of project river water, the State Engineer of Utah is designated as referee and directed to make an announcement on or before April 1st of each year an estimate as to whether or not the supply of water from the project will be sufficient for the ensuing irrigation season to furnish all holders of approved applications 100 per cent of water applied for and approved under the approved applications. Such estimate shall be made by said State Engineer from such sources of information as he shall deem to be reliable and adequate. The estimate made by the State Engineer shall not affect the right of the Directors of the Strawberry Water Users

Association to make their own independent determination as to the available water supply for the purpose of administering the project, but shall be binding upon the Board as to the percentage of charges to be made for the use of project river water as hereinabove directed unless and until the same is, upon good cause, shown to be improper and ordered changed by the Court.

15. That in the event that during any season of high water the flow of Spanish Fork River is more than sufficient to satisfy calls made for water pursuant to the provisions hereinbefore set forth, then sale may be made by the Strawberry Water Users Association of such excess river water, but no sale shall be made for use upon lands covered by presently existing subscriptions in the Strawberry reclamation project at a cost less than that which will be commensurate with the percentage charges hereinbefore set forth for use of project river water. In other words, the charge made for river water to be used upon any lands covered by presently existing subscription agreements in the project shall be such as will not permit nullification or circumvention of the requirements hereinbefore made for charges for use of river water.

16. That this judgment and decree is final, except that the Court retains jurisdiction of this cause for a period of ten years from and after the date hereof for the sole purpose of making changes in the percentages of charges to be made for the use of project river water in the event the percentages herein provided for shall be found to be inequitable. If no application is made to have changes made in the percentages of charges herein provided for within ten years from and after the date hereof, the percentages herein provided for shall become final.

17. Each of the parties to this proceeding shall bear his or her own costs herein expended.

Dated this _____ day of _____, 1950.

BY THE COURT

JAMES